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July 20, 2001

Roberta Mendonca, Public Advisor
CALIFORNIA ENERGY COMMISSION

Re: Docket 01-SIT-1

Dear Roberta,

I expect to attend the Workshop on July 23, but am sending these comments so that they might be reviewed beforehand. I hope to send a more comprehensive set of Comments by the July 30 deadline as well.

Re: Section 1212 Hearing Procedures

I think it would be insufficient protection of the public interest for the presiding member alone to be able to decide that written testimony could be required in order to give oral testimony, which could in turn then be limited. Written testimony, especially compelled under a deadline, might be incomplete, could be inadequate, could have become outdated, could use intemperate language, could be lacking in many ways. To subsequently restrict oral testimony because of forced written testimony is wrong.

Even more important, for one person - the presiding member - to be in the position of determining from written submissions whether disputes are "genuine" as to material facts and that "oral testimony or cross-examination might not "materially assist" the Commission to reach an informed decision is probably dangerous. It certainly violates the spirit of having input from the public, the applicant, and staff, then to be followed by review of the whole Commission.

At the very least, that would be too much power for one person, a person who will naturally be somewhat subjective about what is "genuine" and what is "material." Obviously the Commission would like to be as efficient as possible and also speed things up, but this is not the American, democratic way to do so.

Deciding not to consider testimony because it may not be material or genuine or helpful implies that the individual making that decision has a foregone conclusion as to the outcome of the case!

I have the same criticism of the next proposed change, which would allow the presiding member "to exercise discretion in the conduct of an efficient hearing process." Use of the word "efficient" pretty much gives the game away.

One man's "discretion" can be another man's "suppression." All totalitarian regimes were very keen on efficiency. I think the concept of efficiency should be confined to the

manufacturing business, not to government commissions. The free exchange of ideas, though time-consuming, is not always "efficient," but in the end usually gets the job done.

Re: Section 1710 (h)

I can't believe that de facto secret meetings between interested parties would be allowed, subject only to note-taking by Staff and subsequent memorializing in the docket, when Staff is one of the interested parties. If I understand the proposed change correctly, the public could only learn of such meetings if they were to obtain a complete copy of the entire case. (Is there even a procedure for this?)

Has it been noticed that this proposed change could be considered a violation of the Brown (Sunshine) Act?

Re: Section 1712

It has been acknowledged in previous workshops that many intervenors have not been aware of the adversarial nature of hearings in the certification process, and may therefore not be well prepared. If they are not lawyers themselves, they may not be able to afford legal help. Much of the language already on the books, particularly in this section, makes it clear that intervenors and members of the public who are not lawyers are at a serious disadvantage and may therefore be discouraged from participating. The language proposed seems to distance and disadvantage the public even more.

I think it is the duty of the Commission to try to simplify the language, if not the actual rules, so that the public can more readily participate in the process. After all, the effects of your decisions impact all.

Thank you for your consideration.

Joan Wood, Sutter County farm owner